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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JUNE MCGEE, ON BEHALF OF MARTHA SWEET, INVOLUNTARY CONSERVATEE

PETITIONER

vs.

GORDON TREHARNE, LOS ANGELES PUBLIC GUARDIAN; KATHLEEN BECKER, ADMINISTRATOR OF CARE WEST-WYNGATE NURSING CENTER;

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JUNE MCGEE, ESQ.
1645 E. California Blvd.
Pasadena, Calif. 91106
(818) 577-6641
Petitioner

QUESTIONS PRESENTED

1. Whether petitioner has met the standards required for the issuance of a Certificate of Probable Cause: "a question of some substance", "a substantial showing of the denial of a federal right"?

2. Whether a Certificate of Probable Cause, for an appeal of denial of a petition for habeas corpus, can be denied as "frivolous" on the grounds that a senile, 97 year old person, seized and held for over three years without trial, notice, or hearing on the merits of her seizure and continued detention, by a government agency, is not "in custody" within the meaning of the habeas corpus statute.

3. Is "custody" for purposes of a writ of habeas corpus, limited only to "criminal custody"?

4. Is "custody" of a senile adult the same, for purposes of habeas corpus, as "custody" of a child?

5. Has petitioner been denied due process by the delay caused by the denial of granting the Certificate of Probable Cause?

6. Are the standards for granting a Writ of Habeas Corpus different than the standards for issuance of a Certificate of Probable Cause?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER HEREBY PETITIONS that a Writ of Certiorari be issued to review the Order of the Court of Appeals of the Ninth Circuit, filed on August 29, 1988, which denied a Certificate of Probable

Cause for the purpose of reviewing denial of a petition for a writ of habeas corpus.

OPINIONS BELOW

The order of the United States Court of Appeals for the Ninth Circuit, issued without opinion, denying a Certificate of Probable Cause, is set forth in the appendix at page App. 1 . The Order of the U.S. District Court denying a Certificate of Probable Cause is set forth in the appendix at page App. 2. The opinion of the District Court for the Central District of California, denying the petition for habeas on the grounds of lack of "custody" is set forth in the appendix at App. 4-17 . The previous order of the District Court, granting a Certificate of Probable Cause for the same basic case [prior petition for habeas corpus] is set forth in the

Appendix at page App. 18.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1) 1651(a), 2241, 2253, 2254(a).

STATUTES INVOLVED

The primary statute involved herein is 28 U.S.C. Section 2253, which requires that an appeal of a petition for habeas corpus have a Certificate For Probable Cause. Also involved are statutes, 28 U.S.C. Sections 1651(a), [writs]; 2241 and 2254(a), [habeas corpus].

STATEMENT OF THE CASE

1. Petitioner has made three applications to the U.S. District Court, Central District, for a writ of habeas corpus, after repeated summary denials without hearing or comment in the State Courts. The first was denied by the

federal court because settlement talks were under way. The second was denied in the District Court because of alleged failure to exhaust remedies, and on appeal in the Ninth Circuit because of one-day late filing.

2. Petitioner made application to the U.S. District Court on August 25, 1987, for the third time, for a writ of habeas corpus. The petition was denied on July 5, 1988.

3. Petitioner filed a notice of appeal from the Order on July 11, 1988.

4. The District Court adopted the Report of the Magistrate, submitted April 19, 1988, and refused to issue a Certificate of Probable Cause on July 28, 1988. App. p. 2 . The basis for its denial is that Martha Sweet, senile, involuntary conservatee, is not "in custody" for purposes of the habeas

statute, 28 U.S.C. Sec. 2254, because said "custody" only applies to persons held for criminal activity, not to elderly, innocent persons seized by the State. The Court based its entire opinion on one case: Lehman v. Lycoming County Children's Services Agency, 458 U.S. 502 (1982), a case which is not in point, which supports the position of petitioner rather than that of respondent, and which has nothing to do with the custody of adults, only with child custody.

The District Court did not give separate reasons for denying the Certificate of Probable Cause. It appears to base its denial of the Certificate on its opinion that a habeas is not appropriate because of the "custody" issue. Petitioner herein maintains that there are two separate

issues here: one is the appropriateness of granting a Certificate of Probable Cause, pursuant to 28 U.S.C. Sec. 2253, and whether or not the standards for a Certificate, standards set out in Barefoot v. Estelle, 463 U.S. 880, 103 S. Ct. 3383 (1983), have been met. The other is the issue of "custody" pursuant to the habeas statute, which is separate and apart from the Certificate issue.

If the standards are met for granting a Certificate, the fact that the Court may or may not grant a petition for habeas on the "custody" issue is to be decided on its own separate merits.

Denial of the Certificate means another legal hurdle, more delay in the ultimate consideration of the habeas, and denial of a habeas writ, prolonging illegal custody, is a denial of due

process, an extreme punishment for an elderly person, 97 years old, who has never committed any crime in her life, who wants to be with her own family.

Further on the previous appeal of a petition for habeas in this same case, based upon the same "custody", the U.S. District Court [different judge] denied the habeas petition but granted the Certificate of Probable Cause. App. 18. Thus there is a serious conflict in the standards used by these federal courts in regard to granting Certificates.

5. The Court of Appeals For the Ninth Circuit denied petitioner's Application for a certificate of probable cause on August 29, 1988, without comment. App. p. 1.

6. The detention complained of arose out of process issued by the California Probate Court in case No.

P700713, IN THE MATTER OF THE CONSERVATORSHIP OF MARTHA SWEET. Said Probate Court secretly, without notice, trial, or hearing to Martha Sweet, 97 year old, senile, bedridden mother of June McGee, petitioner, issued temporary Letters of Conservatorship to the Los Angeles County Public Guardian on August 7, 1985. On August 8, 1985, without notice of any kind, said Guardian, with a police escort, violently broke into the house of petitioner, and seized the person of Martha Sweet, over the objections of Martha Sweet and every member of the family. With hand on gun, they threatened to search every room in the house until they found Martha Sweet. They knocked petitioner down when she asked for a search warrant or a court order for removal. They had none. There was no emergency [the Deputy

Public Guardian has admitted this in his written report submitted to the Probate Court], and Martha Sweet, who had never been declared incompetent by any Court, refused to go.

At the time of seizure Martha Sweet had, for years, made her home with petitioner, her only child, and two granddaughters in their home. She was cared for by a full-time, practical nurse and by visiting professional nurses under the supervision of a doctor who made monthly house calls. All these, including doctors familiar with the home care, have stated that the home care was "great", "the best possible care," "not negligent," and that petitioner was a "wonderful woman" to take her aged mother into her home.

The real reason for the seizure was the malice of the Deputy Public Guardian

who had tried to bully his way into the home when petitioner's daughter was there alone and was denied entry. He conspired with a doctor who was having a fee dispute with petitioner. At the doctor's deposition he admitted he signed a blank form of elder abuse with which he did not agree. The records of the Deputy Public Guardian show that he was told prior to obtaining temporary Letters of Conservatorship that the home care was "great", "the best possible care." It took petitioner years to get his records because respondent, represented in the Probate Court by County Counsel, has continued to cover up its illegal seizure and detention of Martha Sweet, and has stonewalled every request for discovery. Because of the vigorous objections of Respondent, the Probate Court, which always acts as one

with respondent and County Counsel, denied over six motions by petitioner for an independent medical examination of Martha Sweet after seizure to cover-up the fact there was nothing wrong with her physical condition, no neglect.

On August 9, 1985, the day after seizure, the Public Guardian had the Probate Court ratify Martha Sweet's change of residence. There was no prior notice to petitioner. Then the Probate Court found, pursuant to the Probate Code, it should have waited seven days before such a hearing. So, again without notice, [petitioner's attorney found out inadvertantly two days before] on August 15, 1985, Respondent had the Probate Court ratify its change of address for Martha Sweet. Perjured testimony was used at the hearing. The

fact of the perjury is not a matter of opinion or conjecture. It is easily proven and fully documented. A third year resident assigned to the doctor with whom petitioner was having a fee dispute, holding the medical records of Martha Sweet in his hand, purported to tell the Court what said records contained, namely that Martha Sweet was undernourished on arrival at the hospital, implying neglect by her family. Those records showed exactly the opposite, that she gained weight at home, and that the home care was superior to the hospital care. At the hearing, petitioner was not allowed to examine the medical records entered as evidence, nor to cross-examine the witness, nor to put on her own doctor witness. The Court said the hearing was "non-adversarial". A citizen has been

seized by the government from her home, her assets confiscated, and the Court says the hearing to ratify change of address is "non-adversarial"! It took petitioner over a year to get these medical records.

When petitioner finally got the records, she moved the Probate Court to reverse the ruling based upon perjured testimony. The Probate Court refused to consider the matter, took it off calendar on its own motion, in violation of the Code of Civil Procedure, Section 170, Duty to Decide, and walked out of the Court room.

On August 13, 1985, the Probate Court appointed an outside attorney and removed petitioner as her mother's attorney at another secret hearing. There was no notice to petitioner, who was not present.

On September 15, 1985, the Probate Court, <u>again secretly</u>, without notice to petitioner, who was not present, suspended petitioner's durable power of attorney, a legal document, independently witnessed, back in 1980, wherein Martha Sweet gave what remained of her assets to petitioner, and made petitioner her caretaker in the event she became incompetent. As a matter of California law, this supercedes Letters of Conservatorship as to medical decisions.

After one year of discovery all of which proved the excellent home care of petitioner, petitioner twice moved the Probate Court to set a date for a hearing on the merits as to who should have custody of Martha Sweet. Both petitioner and respondent had filed petitions for conservatorship. After

vigorous objection by Respondent, the Court refused to set a date for any trial on the merits, in violation of its own Probate Code. Petitioner appealed to the State Court of Appeal and Supreme Court, asking that the Probate Court be ordered to comply with its own law and set a date for a hearing on the merits of custody. These appeals were summarily denied, without trial, hearing or comment.

Petitioner repeatedly petitioned for a writ of habeas corpus in the State Courts. All were denied summarily, without trial or hearing. Petitioner appealed, three times to the State Court of Appeal, twice in the California Supreme Court. Again these appeals were denied summarily, without trial, hearing or comment, usually by postcard.

When petitioner found she could not

get the Probate Court to set a date for a hearing on the merits as to custody of Martha Sweet, she filed a civil rights lawsuit in the federal District Court, McGee et al., v. County of L. A., et al., CV86-3322RMT, on the grounds of conspiracy to deprive Martha Sweet and her family of their civil rights, 42 U.S.C. Sections 1983, 1985, 1986, and assault, battery, conversion of assets, etc. Over 22 briefs were filed by eight lawfirms, to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure. But the civil rights violations held. The case is now stayed pending this appeal on the habeas denial.

Respondent's response to the federal civil rights lawsuit was to bring subpoenas and citations against petitioner and her family and witnesses in the Probate Court, alleging

concealment of assets of Martha Sweet, despite the fact that Martha Sweet had no assets and had not worked for over 40 years. Without ever having any trial on the merits as to who should have custody, respondent wanted to investigate petitioner's assets and seize them to pay for its illegal custody of Martha Sweet. Martha Sweet had existed, with petitioner's assistance, on her small war widow's pension and social security.1/ Petitioner, her only child, helped support her mother and worked since she was 12 years old. Respondent used the power of the State Probate Court to conduct an inquisition into the personal finances of petitioner and her family in violation of their constitutional right to privacy. Respondent continues this for the same reason it continues to hold

1/ Presently respondent is asking the Probate Court to allow it to pay its legal fees, used to defend itself from suit by Martha Sweet, from her assets.

custody of Martha Sweet, in order to intimidate and harrass petitioner and to prevent her from pursuing the federal civil rights case.

Respondent keeps Martha Sweet in a substandard nursing home, spending the least possible on her care and pocketing part of her small income for its alleged "services". Even after said nursing home, Villa Oaks, was fined and cited twice by the L.A. Health Department for physically abusing Martha Sweet, [she had bruised face, hands, and arms], respondent refused to move her to a safer installation. Respondent is only interested in protecting its legal position and that of Villa Oaks, its co-defendant in the federal civil rights case. It has no concern for the well-being of its helpless conservatee.

On June 12, 1987, the Probate Court

gratuitously granted permanent Letters of Conservatorship to the Public Guardian. The matter was not even before the Court. There was no notice, trial or hearing to petitioner, who had no opportunity to put on her witnesses.

Petitioner had moved the Court to remove the Public Guardian as conservator because of the continuing physical abuse Martha Sweet received under its care. The Court denied the motion to remove without considering any evidence [citations and fines], and instead granted permanent Letters to respondent. Then a week later, on June 19, 1987, again without notice or trial on the merits, the Court again gratuitously granted permanent Letters of Conservatorship to Respondent.

County Counsel, representing Respondent, falsified the Orders, making

it appear the Letters were first granted on June 19, 1987, with full notice and hearing. The Court Reporter's certified transcripts of the hearings on June 12th and 19th prove conclusively that this is not so, and that there was no trial, notice, or hearing on either date. This is on appeal in the State Court, McGee v. Public Guardian, No. B 28864.

At this point petitioner filed a Petition For Removal of the case to the federal court, pursuant to 28 U.S.C. Section 1443, on the grounds that she cannot enforce her civil rights in the State Probate court. The Probate Court, ignoring the jurisdiction of the federal court, went right ahead with the Probate case, despite the mandatory stay caused by 28 U.S.C. Sec. 1446(e) before remand. The removal is now on appeal in the Ninth Circuit, No. 88-6094.

Then again secretly, despite petitioner's request for notice and all the pending litigation, respondent, without notice, trial or hearing to petitioner, had the Probate Court grant new temporary Letters to it on July 22, 1987. This respondent and the Probate Court grant Letters of Conservatorship, seizing individuals and their assets, faster than petitioner can appeal them, and always secretly, without notice.

Petitioner did not even find out about these new Letters until months later when respondent answered an Order To Show Cause on the petition for habeas.

Martha Sweet is now held pursuant to these new temporary Letters, which according to Probate Code, Section 2750, cannot be appealed. They can only be challenged by writ. Thus without a writ

of habeas, Martha Sweet may remain in the negligent and illegal custody of respondent for five years or however long it takes to decide the federal case, unless she dies first. This is the reason for the urgency of this appeal for a certificate of probable cause to go forward with the petition for habeas.

Twice now the federal court issued an order to show cause why a writ of habeas should not be granted. The prior petition for a habeas was denied on the grounds of failure to exhaust [Rose v. Lundy, 455 U.S. 559 (1982)] because the petitions for conservatorship were pending in the Probate court and the argument was that petitioner would have a chance to present her witnesses and case when the hearing was held in the Probate Court on the permanent Letters.

This argument is moot now that the Probate Court gratuitously granted permanent Letters on June 12, 1987, denying the petitions for conservatorship without any notice or hearing on the merits whatsoever. Now there can be no further exhaustion. As stated above, respondent had new temporary Letters granted, which cannot be appealed, Probate Code 2750. They can only be challenged by a writ. This means that even if petitioner wins her appeal against respondent in the State Court of Appeal for the illegal issuance of the permanent Letters on June 12, 1987, Martha Sweet is still in custody of the Public Guardian, held by the new temporary Letters.

These new temporary Letters are part of this habeas appeal. If no Certificate of Probable Cause is granted, there can

be no writ of habeas corpus, and Martha Sweet, now 97 years old, hospitalized twice in the last six months, will likely die, a captive of this "Guardian", a corrupt, arrogant quasi-government agency. She is a hostage of the federal civil rights case, held for over three years without any trial or hearing on the merits of her seizure or continued detention. Her continued detention is solely for the purpose of protecting respondent's legal position in the federal civil rights lawsuit.

Respondent is defended by County Counsel at taxpayer expense, and supported by a powerful Probate Court, that always does exactly what County Counsel asks, even in violation of its own State law. Respondent has been examined by the L.A. Grand Jury for

misappropriating the assets of its conservatees, the very, helpless persons it was created to protect.

SUMMARY OF ARGUMENT FOR GRANTING A CERTIFICATE OF PROBABLE CAUSE

A citizen has been seized, her assets confiscated, her home violently broken into, without search warrant or emergency, and with no court order for removal. At the only hearing held, the court allowed only the perjured evidence of the government , and said it was "non-adversarial". There is a substantial, justiciable issue: does habeas "custody" apply to the illegal detention of innocent victims of crimes, or only to the illegal detention of criminals? Does the fact that the government, the custodian, is the criminal make any difference as to illegal "custody" for habeas purposes?

REASONS FOR GRANTING THE WRIT

I

THERE IS AN UNDERLYING ISSUE OF GREAT IMPORTANCE HERE

A. To a population estimated to have over ninteen percent of its citizens at retirement age by the year 2000, this case involves a critical issue: whether or not a government agency can arbitrarily seize elderly people, never declared legally incompetent, known to be cared for ["the best possible care"] by their closest relatives, can confiscate their assets and hold them in custody indefinitely, without ever having any noticed trial on the merits, or hearing as to the legitimacy of that custody. Petitioner maintains that she has a constitutional right, an ancient right of family and blood, absent neglect or abuse, to the custody, care, control and companionship

of her mother, a right which cannot be removed without notice, trial or hearing on the merits to her, an indispensible person where the custody of her mother is concerned.

Families have the right to remain together, including the right of the mother to have her children with her, as parts of "liberty" under the Fifth and Fourteenth Amendments, Duchesne v. Sugarman 566 Fed.2d 817. (1977, C. A. 2nd, N.Y.)

The lower Court here is arguing that because no crime has been committed by the elderly, senile person who has been seized, that said person has no rights, subject to review by the habeas corpus statute, and the federal court will not review the violations of her constitutional right to due process and equal protection except by lengthy [42

U.S.C. Sec. 1983] lawsuit, during which time these persons must continue to submit to the illegal confinement.

The Select Committee on the Aging, United States House of Representatives, stated:

> "There are no federal laws designed to afford basic protections in the guardianship process. The United States can take no honor in being one of the only industrialized nations on earth that lacks such a system. Even the Soviet Union has a national code for the protection of the elderly." Report by the Chairman of the Subcommitte on Health and Long-Term Care of the Select Committee on Aging, House of Representatives, p.7, December, 1987.

> "The proposed ward must be given sufficient notice prior to the competency hearing and must be present . . . . and represented by legal counsel." Id. at p. 7.

The Committee is attempting to have Congress enact legislation to correct the very abuse petitioner is concerned with in this case: namely the fact that

elderly people have fewer civil rights than a convicted criminal.

Martha Sweet is 97 years old and cannot wait for this legislation.

B. MARTHA SWEET IS HELD AS A PRISONER AGAINST HER OWN WILL AND IN VIOLATION OF HER RIGHT TO SELF-DETERMINATION.

Martha Sweet has been held, against her will and the will of her family, for over three years now without trial on the merits of her seizure or detention. She herself selected petitioner to be her caretaker if she became incompetent by a valid, witnessed durable power of attorney. Her continued detention is in violation of her own choice, her rights under the Fifth and Fourteenth amendments against deprivation of "life, liberty, or property without due process of law."

The lower court has attempted to claim that petitioner seeks a writ of

habeas to pursue her own interests, her custody of her mother, not those of the involuntary conservatee. Respondent alleged that "the major restrictions on Mrs. Sweet's liberty arise not out of her status as a conservatee" but out of "her physical condition", her senility. This is not true. Martha Sweet's "liberty interest" which has been and continues to be violated, is her own decision, made years ago, when she was fully competent, as to who should be her caretaker if and when she became incompetent. It is this right of an individual to self-determination that has been violated.

The lower Court is also wrong when it states that Martha Sweet of necessity must have a legal conservator. The California Court of Appeals, in a landmark decision against Respondent

[the Walker case] held that an incapacitated person, who can maintain herself in liberty, meeting her daily living needs, food, clothing, shelter, etc., with the aid of willing and responsible friends or relatives, does not require a legal conservatorship. Martha Sweet existed without such a legal conservatorship for 95 years with the support and care of her family, care described by the attending physician as "great". She does not require a legal conservatorship.

It was the intent of the California Legislature that temporary Letters of Conservatorship be granted in emergency situations only, and then for a very short time, until a full hearing on the merits was accorded the proposed conservatee and her closest family members. Normally, the California

Probate Code, Section 2257, holds that a noticed [15 days] hearing should be held and temporary Letters terminated within 30 days. Martha Sweet has now been held for over three years on temporary Letters, without hearing on the merits.

II

PETITIONER HAS MET ALL THE STANDARDS SET FORTH FOR ISSUANCE OF A CERTIFICATE OF PROBABLE CAUSE.

A. Petitioner has met the standards set forth in Barefoot v. Estelle, 463 U.S. 880, 103 S. Ct. 3383 (1983), for granting a Certificate pursuant to 28 U.S.C. 2253. Barefoot holds:

> "We agree with the weight of opinion in the Court of Appeal that a Certificate of Probable Cause requires petitioner to make a "substantial showing of the denial of a federal right." Foster v. Field, 413 F.2d 1050 (9th Cir., 1969): "There should be a question of some substance."

Gordon v. Willis, 516 F. Supp. 911,

913 (N.D. Ga. 1980), cited by Barefoot, supra:

> "Petitioner need not show that he should prevail on the merits. He has already failed that endeavor. Rather he must demonstrate that the issues are debateable among jurists of reason; that a court could resolve the issues [in a different manner or that the questions are adequate to deserve encouragement to proceed further."

B. THERE IS NOTHING FRIVOLOUS ABOUT THIS APPEAL: THE LIFE AND WELL-BEING OF AN ELDERLY LADY WHO HAS COMMITTED NO CRIME IS AT STAKE HERE.

Martha Sweet is 97 years old and has been held by Respondent in substandard installations which have been cited and fined for her neglect and abuse. Respondent, fully aware of this, has refused to move her to a safe installation or to give her the type of care she needs. Rather it protects its legal position and that of its codefendants.

C. PETITIONER WOULD BE REMISS IN HER DUTY TO HER MOTHER IF SHE DID NOT MAKE EVERY EFFORT TO REMOVE HER FROM SUCH HARMFUL CUSTODY.

Respondent is being sued by Martha Sweet and is in a conflict of interest with her. It would profit legally by her death. No senile, helpless person should be left in the custody of anyone who would profit by her death, and who has exhibited the type of total disregard for their well-being shown by this respondent. There is nothing "frivolous" about a petition for habeas in this case.

III

REASONABLE JURORS COULD DEBATE AT LENGTH OVER THE OPINION OF THE DISTRICT COURT AS TO THE LEGALITY OF DENYING THE WRIT OF HABEAS.

The basis of the denial by the District Court of the writ of habeas and presumably, of the Certificate of

Probable Cause, is the erroneous contention that this case is so much in point with the Lehman case, [458 U.S. 502, (1982)], on the issue of "custody" that there is no reasonable doubt that a writ of habeas will be denied. The lower court does not even bother to examine the merits of granting a certificate of probable cause on its own merits. It automatically assumes that "custody" of a senile adult like "custody" of a child, is not "custody" for purposes of habeas corpus. Respondent can point to no case to support this position, out of the thousands of habeas cases since the Magna Carta.

A. LEHMAN IS NOT IN POINT: CHILD "CUSTODY" IS QUITE DIFFERENT FROM ADULT "CUSTODY", EVEN INCOMPETENT ADULT CUSTODY.

In Lehman the mother is challenging the County for custody after she has

already had a full, noticed trial in the State court on the merits of custody. The challenge is a tactical move, designed by her attorney to avoid preclusion. She has had her trial on the merits in the state court and has appealed the decision for guardianship all the way through the state courts, followed by certiorari in the Supreme Court, which was denied. The mother is attempting to avoid collateral estoppel if she filed a civil rights action, [Sec. 1983], as her case had been decided against her on the merits in the state court.

Also in the Lehman case the mother initially voluntarily relinquished custody of her children to others. She was not contesting this initial seizure and custody. Later at a duly noticed court hearing wherein she presented

testimony and witnesses, where her side was fully heard, she was adjudged an improper person for permanent legal guardianship [mentally inadequate].

In the instant case, petitioner has had no hearing on the merits in the State Court. The initial seizure was in violation of the wishes and will of petitioner and her mother as set forth in her written, witnessed document, the durable power. Said seizure and continued detention are without any coloration of law, without any court hearing on the merits, without notice, or adversarial trial. The instant case, unlike Lehman, involves the seizure without notice and confiscation of the assets of a person who had never been declared incompetent by any court, and the holding of that person for over three years without any trial on the

merits of seizure or continuing custody.

B. CUSTODY OF AN ADULT IS VASTLY DIFFERENT FROM CUSTODY OF A CHILD

In the instant case the right sought to be enforced is the right of an adult individual to decide their own future, who their own care takers should be. Martha Sweet made this decision when she signed the witnessed durable power. She is an adult and she has such a right. A child, no matter how bright and intelligent, has no such right to decide his guardian.

The court in Lehman based its decision that custody of children is not "custody" pursuant to the habeas jurisdiction on three main grounds:

> ". . ."the test of custody is not present physical restraint, but whether there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus".

The court states that it will leave open the possibility of habeas if a child is actually confined in a state institution, rather than in the custody of a foster parent pursuant to a court order. Lehman, at 519.

By this standard, Lehman supports "custody" of Martha Sweet and her immediate release by writ of habeas. She is confined in an institution, a nursing hospital, supported primarily by public funds, that is, by social security, Medicare and Medi-cal, tax-payer funding, coming through its elderly patients. She suffers "restraints that are not shared by the public generally." At the hospital where she is kept there is an order by respondent that she is not to be released except by their order. Further the federal Department of Health

and Human Resources has cited the hospital, Villa Oaks, repeatedly for substandard conditions, filth and understaffing. The installation admitted under oath that ants were found in Martha Sweet's bed at least twice. This is not the type of care elderly people receive at home. Such treatment of elderly, helpless people "shocks the conscience". It is treatment that is not shared by the public generally.

In Lehman the court bases its decision not to accept child-custody disputes because:

> "the State's interest in finality is unusually strong in child-custody disputes. The grant of federal habeas would prolong uncertainty for children such as the Lehman sons, possibly lessening their chances of adoption." Id at 513.

This argument has no relevance whatsoever in the instant case. No one wants to "adopt" Martha Sweet. She is

not like a child. She will not grow-up. She has little memory and is incontinent. She is a continuing messy and disagreeable job. She will not get better. Nor does she comprehend the meaning of "finality", but she knows she is among strangers, and she wants to be with her family.

The Court speaks of federalism concerns and the State's "substantial interests" in family relationships and child custody. This too has no application in the instant situation. This is not a dispute between a father and mother or other relatives, as in the typical child custody situation.

Normally a child has few if any assets and that is not the real reason for the custody dispute. Here in the instant case we have a custody dispute between the relatives and a government

agency notorious [examined by the L.A. Grand Jury] for seizing elderly senile individuals thought to possess considerable assets. It wants custody for its own interests, and they have nothing to do with concern for Martha Sweet's welfare. The Public Guardian lives off the assets of its conservatees, and it lives well. It aggrandizes its own power by the number of conservatees it controls, and especially by its control of their assets for which it charges their estate. It is to its advantage to seize elderly persons with substantial assets. This is its pattern and practice. [Also because of its preference for monied conservatees, its discretionary conservatees are disproportionately white. Whether intentional or not, this is a violation of civil rights of

minorities, pursuant to Metropolitan Housing Development Corp. v. Arlington Heights, (1977, C.A.7) 558 F.2d 1283, cert. denied 434 U.S. 1025, 54 L. Ed. 2d 772, 98 S. Ct. 752.]

The bottom line here is that these are issues that are not present in child-custody cases. "Custody" of an adult and seizure by a government agency of their assets is entirely different in all aspects from "custody" of a child.

Issues of who is the best parent, involving considerable study of detailed, intra-family personal matters are not present in the instant petition for habeas. Here we have a decision to deprive an individual of her liberty and her assets, of her right to make her own decision as to her caretaker, a decision that could determine how she spends the rest of her life and with whom. She

will not grow up and become her own person again, in control of her life, as a child will. In the instant case, this decision has been made arbitrarily, without legal safe-guards, without due process, equal protection, notice, or hearing on the merits by a vindictive social worker and a state Probate court, that has repeatedly shown total insensitivity to civil rights, that is totally under the control of County Counsel and the Public Guardian, with whom it works daily on a one-on-one basis. Apparently it cannot believe that these individuals are involved in criminal activity. Kidnapping and conversion of assets are just as much criminal acts when committed by government agencies as by private individuals.

"If the state courts are offended by habeas review, they may have their

own poor record to blame." P. Robinson, An Empirical Study of Federal Habeas Corpus Review of State Court Judgments 14 (1970); Shapiro, Federal Habeas Corpus: A Study in Massachusetts, 87 Harv. L. Rev. 321, 368-69 (1973).

Finally in Lehman the majority state:

> "At bottom the question is whether these constitutional issues can be adequately raised through the usual channels--appeal, certiorari, and the civil rights statutes--or whether the vehicle of federal habeas, with its unique features, is required." 584 F.2d at 1111.
>
> "Habeas should be reserved for those instances in which the federal interest in individual liberty is so strong that it outweights federalism and finality concerns."

The Court then in a footnote cites Hensley, Id at 516.

> "The custody requirement of the habeas corpus statute is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty. Since habeas corpus is an extraordinary remedy whose operation is to a large extent uninhibited by traditional rules of finality and federalism, its use has been limited to cases of special urgency, leaving more conventional remedies for causes in which the

restraints on liberty are neither severe nor immediate." 411 U.S., at 351, 93 S. Ct., at 1575.

In the instant case, we have "severe restraints", that are "immediate", and we have "special urgency". A 97 year old woman, with no memory, helpless, left in an under-staffed institution, which was cited repeatedly and fined for neglecting her care is urgent. Unlike a child she has no memory and cannot tell anyone if she is physically abused. She is not handled by carefully selected and screened "foster parents", only by harried, over-worked attendants, paid the minimum wage, who change jobs frequently, to whom she is little more than a disagreeable job. Lengthy litigation is no remedy for her. She is a hostage of the civil rights lawsuit and in the custody of a conservator who prefers its interests over hers.

IV

PETITIONER IS NOT ASKING THE COURT TO DETERMINE WHO IS BEST QUALIFIED TO BE CONSERVATOR OF MARTHA SWEET

The crux of the majority's argument in Lehman is that the mother was not acting on behalf of her children, not seeking to enforce any "liberty" interest of theirs, but was seeking her own parental rights, her own custody, "the right to determine who the children should live with for years to come"; that she was using the habeas petition for this purpose. Id at 525.

In the Magistrate's Proposed Judgment, it is erroneously stated that petitioner is really asking for custody of her mother. That is not what petitioner is asking. A petition for habeas does not go to the issue of who is best qualified to be the caretaker of an individual. The proper and legal

custody of Martha Sweet is now and always has been with petitioner. Petitioner holds custody pursuant to two legal principals: by right of blood and because Martha Sweet herself in a witnessed document, a durable power of attorney, chose petitioner to be her caretaker.

This is a case of tortious [and criminal] interference by respondent with legal custody. Petitioner asks that a hearing be held to determine the legality of the custody and continuing detention of Martha Sweet by Respondent, <u>regardless of who is best qualified to be conservator.</u>

The issue here is that, no matter who should be conservator of Martha Sweet, her seizure [she had not been declared to be mentally incompetent] in violation of the Fourth Amendment, by

police and respondent's social workers, violently breaking into her home [owned by her family] without notice, trial or hearing on the merits to her or to her daughter with whom she made her home, without court order for removal or search warrant, in the absence of consent or emergency, the seizure of her assets, and her continuing detention by respondent, refusing any hearing on the merits for almost three years, is in violation of her and her family's constitutional rights to due process and equal protection. This is a "liberty" interest of the first order.

Petitioner in her petition for a writ of habeas asked that Martha Sweet be placed in the temporary custody of a neutral party, Mr. Rucker, her court appointed guardian ad litem in the civil rights case, who has agreed to supervise

her care in a nursing home near his residence, pending outcome of the federal civil rights case.

V

THE LOWER COURT HAS NOT COMPLIED WITH THE REQUIREMENTS OF DENYING A CERTIFICATE OF PROBABLE CAUSE.

A. The lower courts have failed to state definitively why they denied a Certificate. Pursuant to Gardner v. Poque, 558 F.2d 548, a District Court must issue a detailed statement of the reasons for the decline of a certificate of probable cause. In the instant case, the court simply denied the certificate without stating any separate reasons, as to the "substantiality" of the issues, etc. It based its denial of the certificate only on its opinion on the issue of "custody", implying that the Lehman case is so compelling on the issue of "custody" that there can be no

other conclusion. Any consideration of the Lehman case shows that this simply is not so. Respondent cannot cite one case that supports its position regarding custody of an adult. The Lehman case supports petitioner, not respondent. Even in the Lehman case, in its footnote, No. 4, p. 519, the Court distinguished child custody from arbitrary adult custody, "as in a madhouse".

Further the lower court attempts to foreclose any consideration of the issue of "custody" by asserting that the petition is "frivolous" and brought "in bad faith".

In Application of Burwell, 236 F.2d 770, (9th Cir., 1956), the court held on the "question of sufficient substance" that:

> . . ." the difference between the terms "not frivolous" and

"substantial" is perhaps one of art. Certainly it is subject to subtle analysis."
Coppedge v. U.S., 369 U.S. 438, 445, 82 S. Ct. 917, 1 L. Ed. 2d 21 (1962) holds:

"The good faith requirement is satisfied if petitioner seeks review of any issue that is not frivolous."
The issues involved in granting a CPC are different than the multitude of possible reasons for denying a writ of habeas. Reasons for denying a certificate concern "substantiality" of the issues involved, something the lower court and the court of appeal herein, adopting the Magistrate's opinion, did not address, and whether or not the court would ultimately grant a writ of habeas is not the deciding factor as to whether or not to grant a certificate.

Application of Chessman, (C.A. Cal. 1955), 219 F.2d 162, holds:

"Existance of a justiciable question

> for the appeals court to decide requires a circuit judge . . . to grant a certificate of probable cause for appeal under this section [28 U.S.C. Sec. 2253] though the judge might decide such a question adversely to the party seeking the certificate."

In the instant case, there is an extremely important "justiciable question" for the court of appeals to decide: that is, whether or not "custody" of an adult is the same as "custody" of a child for purposes of the habeas statute, whether or not only persons convicted of crimes meet the "custody" standards for a writ of habeas, as the district court maintains.

B. The Court of Appeals and the lower Court have violated the due process rights of petitioner. Barefoot v. Estelle, 463 U.S. 883, holds that where there are second or successive federal habeas corpus petitions, it is proper for the district court to

expedite consideration of the petition. Herein, the lower court has held this petition for months and months. During the actual period after the filing of the habeas petition and prior to its denial, Martha Sweet experienced a new instance of physical abuse [another citation by the L.A. Dept. of Health] and has been rushed to the emergency hospital twice with fever and pneumonia, caused by failure of her caretakers to properly monitor her fluid intake. [And this is in the latest nursing center where she is held] Her life under the custody of respondent is at risk. The delay caused by denial of the Certificate, her continued detention by respondent, has caused her irreparable harm. She is quite old and the time lost with her family cannot be recovered.

VI

A CERTIFICATE OF PROBABLE CAUSE IS UNNECESSARY IN THIS CASE BECAUSE THE PURPOSE OF A CPC IS MISSING.

"Congress established the requirement that a prisoner obtain a CPC to appeal in order to prevent frivolous appeals from delaying the State's ability to impose sentences, including the death sentence."
Barefoot, 463 U.S. 892, See FN #3.

In the instant case, there is no criminal. [The criminal here is the government, respondent.] There is no question that petitioner, the involuntary conservatee and her family, are absolutely innocent of any crime or wrong-doing. No certificate is necessary.

VII

HISTORICALLY HABEAS HAS BEEN USED IN THE FEDERAL COURTS FOR RELEASE OF NON-CRIMINALS. IT WAS INTENDED FOR INNOCENT PERSONS, ARBITRARILY SEIZED

39 C.J.S., Habeas Corpus, Sec. 132,

states:

> "Habeas corpus is a traditional means for seeking release from illegal confinement, and it is the normal means of testing legality of detention in a mental hospital whether based upon civil or criminal proceedings." O'Beirne v. Overholser, 287 F.2d 133, 109 U.S. App. D.C. 279.

> "Where the patient was given a fair and adequate sanity hearing, representation by counsel, so that the requirements of due process were met, he is not entitled to federal habeas corpus." U.S. ex rel. McGurrin v. Shovlin, C.A. Pa., 455 F.2d 1278, cert. den. 92 S. Ct. 2450, 407 U.S. 913, 32 L. Ed. 2d 688.

> "In a federal habeas corpus proceedings, a patient in a state mental hospital may test the validity of his commitment where he can show that his constitutional rights were violated in the proceedings which resulted in the commitment." Hartmann v. Scott, 488 F. 2d 1215 (C.A. Minn.); In re Ross, 48 F. Supp. 815 (D.C. Ore.); Jackson v. Foti, 670 F. 2d 516 (C.A. La.); Arensman v. Brown, 430 F. 2d 190 (C.A. Ind.); U.S. ex rel. Morgan v. Wolfe, 232 F. Supp. 85 (D.C. N.Y.).

The above cases prove that the federal courts traditionally make a distinction between adult commitment and

child "custody". There is no difference between custody for mental impairment and custody for senility. Habeas corpus was never intended to be limited to criminal "custody". The district court is entirely wrong on this issue.

CONCLUSION

Martha Sweet is the very type of person the writ of habeas was invented for: an innocent person, seized arbitrarily, her assets confiscated, and held indefinitely under harmful conditions, by an arrogant government agency, without notice, due process, hearing or trial on the merits of the seizure.

She is an innocent hostage of a government agency seeking to avoid and cover up its wrongdoing and to protect its legal position in the civil rights

case wherein it is sued by its own conservatee.

A Certificate of Probable Cause should be issued here: there is a substantial justiciable issue: whether or not "custody" of an individual, old and senile, who legally decided who her caretaker should be years prior, is the same as "custody" of a child, whether only criminals meet the "custody" standard for a writ of habeas.

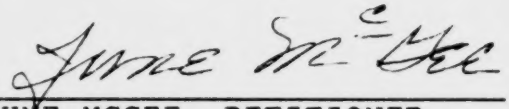
If a Certificate is not granted in this case, <u>there is no other remedy</u> except years of a long, drawn out civil rights lawsuit, litigation which a plaintiff, a 97 year old woman, may not survive. In the meantime she is held in substandard conditions, abused, and deprived of the companionship of her family, those whom she knows best, who have always cared for her.

Seizure such as this sets a dangerous precedent for a "free" society. It is reminiscent of the seizure, without notice or hearing, of political "dissidents", and their indefinite detention without trial in "psychological hospitals" in totalitarian countries.

WHEREFORE, your petitioner respectfully asks that this Court grant the Petition for a Writ of Certiorari to review the decision of the Court of Appeals for the Ninth Circuit.

RESPECTFULLY SUBMITTED,

October 14, 1988



JUNE MCGEE, PETITIONER
1645 E. California Blvd.
Pasadena, Calif. 91106
(818) 577-6641

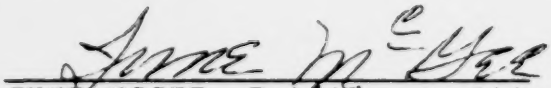
PROOF OF SERVICE

JUNE MCGEE, on oath deposes and states that on the 19th day of October, 1988, three copies of the Petition for a Writ of Certiorari were served by first class mail, postage prepaid, on the following persons:

John Daly, Esq., c/o CHASE, ROTCHFORD, DRUKKER & BOGUST, attorney for the Public Guardian, 700 S. Flower St., 5th Floor, L. A., Calif. 90017; (213) 626-8711

Kathleen Becker, Administrator, Care West-Wyngate Nursing Center, 7660 Wyngate St., Tujunga, Calif. 91042. (818) 352-0454

All parties required to be served have been served.



JUNE MCGEE, Petitioner-Attorney
1645 E. California Blvd.
Pasadena, Calif. 91106; (818) 577-664

Appendix 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED:
AUGUST 29, 1980
CATHY A. CATTERSON, CLERK,
U.S. COURT OF APPEALS

JUNE S. MCGEE, etc.,	No. 88-6231
Petitioner,	DC# CV 87-5630
	CENTRAL DISTRICT
VS.	
GORDON TREHARNE,	ORDER
Respondent.	

Before: WALLACE and BEEZER, Circuit Judges

The application for a certificate of probable cause is denied.

App. 2

DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUNE McGEE, on behalf of MARTHA SWEET, involuntary Conservatee, Petitioner, vs. GORDON TREHARNE Public Guardian et al., Respondent(s).	No. CV87-5630-RMT(K) ORDER DENYING APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE

Pursuant to 28 U.S.C. Sect. 636 and 28 U.S.C. Sect 2253, the Court has reviewed the Application for Certificate of Probable Cause and the Report and Recommendation of the United States Magistrate submitted on April 19, 1988 and adopted by the Court in support of its judgment of dismissal entered on July 6, 1988 and finds that the Application is frivolous and without merit.

Pursuant to 28 U.S.C. Sect 1915(a), this Court certifies that the appeal is not taken in good faith for the reasons set forth in the aforesaid Report and Recommendation on file herein.

IT IS ORDERED that the Applicaion is denied.

DATED: This 28th day of July 27, 1988.

/s/

ROBERT M. TAKASUGI
United States District
Judge

App. 4

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUNE McGEE, on behalf of MARTHA H. SWEET) Conservatee, Petitioner, vs. GORDON TREHARNE) Public Guardian) L.A., and JAMES) LEWIS, Adminis-) trator of Villa) Oaks Convales- cent Hospital, Respondent(s).	No. CV87-5630-RMT(K) FINDINGS ON A PETITION FOR WRIT OF HABEAS CORPUS By a PERSON IN STATE CUSTODY

These findings are submitted to the United States District Judge pursuant to the provisions of 28 U.S.C. Sect. 636 and General Order 194 of the United States District Court for the Central District of California.

On August 25, 1987, this petition was filed on behalf of Martha Sweet by her daughter, June McGee (petitioner),

representing that she has a "durable power of attorney", and challenging the conservatorship exercised by the public guardian over Martha Sweet.

At a hearing on September 1, 1987, the Court made a preliminary finding that there was a sufficient question of whether there had been exhaustion of state remedies to justify calling for a response. On October 2, 1987, a response was filed, together with a motion to dismiss, to which petitioner responded on October 26th. Respondent filed a further response on October 30th, and on that date, at a hearing, petitioner was permitted to amend her petition and respondent was ordered to file a further response on the merits. This was filed on November 17, 1987. At petitioner's request she was given an extension of time and she filed a Traverse on December 7, 1987.

On November 23rd a civil action alleging violations of civil rights which included many of the same issues was referred to this Court for a settlement conference. On December 9th this Court temporarily stayed proceedings pending possible settlement. In order to facilitate the settlement, on January 7, 1988, the Magistrate stayed all proceedings in the habeas corpus matter for 60 days.

Petitioner had further amended her petition for a writ of habeas corpus on January 1, 1988.

Although the Magistrate believes that some progress has been made towards settlement, it has not yet been accomplished. There appears to be no good cause to further stay proceedings on the petition for writ of habeas corpus, therefore the Magistrate submits his findings.

The Magistrate has read and considered the petition, as well as all subsequent pleadings and exhibits and makes the following findings.

Martha H. Sweet (conservatee), the subject of this writ of habeas corpus is a temporary conservatee of Gordon Treharne, public guardian of Los Angeles County, pursuant to temporary letters of conservatorship, initially issued by the Superior Court of California on August 7, 1985. Permanent letters of conservatorship were issued to the public guardian on June 19, 1987. Pursuant to an appeal taken by petitioner, June McGee, from the denial of her petition to be appointed permanent conservator new temporary letters were issued to the public guardian on July 22, 1987. Mrs. Sweet is currently being cared for at Villa Oaks Convalescent Hospital, having been

placed there by the conservator.

Mrs. Sweet is a non-ambulatory total care patient in a skilled nursing facility. The public gaurdian sought and secured temporary conservatorship allegedly because of reports of suspected neglect initiated by various of Martha Sweet's healthcare providers and a referral of the matter from the Adult Protective Services. Petitioner states that she has a "durable power of attorney" (Petn. Exh. G) and seeks the release of Martha Sweet, alleging that she was illegally removed from petitioner's home and that letters of conservatorship were improperly obtained by the public guardian.

In its initial answer to the petition, respondent argued the petitioner had failed to exhause state remedies in that her appeal from orders granting permaanent letters of

conservatorship is pending before the California Court of Appeals. In its motion to dismiss, respondent argued taht habeas corpus was an inappropriate remedy, since petitioner does not seek release of the conservatee, but rather, wishes to be substituted in place of the public guardian. Next it is argued that petitioner has no standing to petition on behalf of Martha Sweet and that, in any event, the petition should be dismissed for failure to exhaust state remedies. In this latter connection, it is pointed out that two previous petitions for writs of habeas corpus in this Court have been denied for failure to exhaust, CV 85-8468-AAH and CV 86-0755-AHS filed January 10, and April 9, 1986, respectively.

In prayer of her petition, petitioner "asks this Honorable Court to hold unconstitutional the Probate Code

Sections 1820 and 2256, pursuant to which temporary and permanent letters of conservatorship were granted; or in the alternative, to hold out their application in the instant case by the public guardian was unconstitutional. Petitioner asks that Martha Sweet be returned to the control and custody of her own family and to the care of doctors chosen by her family, who will objectively determine what care is in her best medical interests, with the informed consent of her family." (Petn., p. 41)

In a supplemental answer filed November 17, 1987, respondent, Gordon Treharne, argues that the conservatorship under consideration does not qualify as "custody" within the meaning of the federal habeas corpus statute. He points out that a conservatorship is a Court proceeding

wherein a manager for the financial affairs or personal care of one either physically or mentally unable to handle either or both is appointed. California Probate Code, Sect. 1801. It is pointed out that "[t]he major restrictions on Mrs. Sweet's individual liberty arise not out of her status as a conservatee, as such, but by virtue of her physical and mental incapacities which have been established by, [it is alleged], uncontradicted evidence that Mrs. Sweet is frequently disoriented as to time and place, that she is senile, that she is incapable of giving any form of medical consent and that she is non-ambulatory and incontinent."1/ (Points & Authorities, p. 3-4)

1/ Petitioner has made similar representations regarding Mrs. Sweet in seeking to have herself named as conservator (Points & Authorities, pp. 19-20) There appears to be no dispute as to the necessity for a conservator.

PUBLISHER'S NOTE

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Respondent goes on to argue that a conservatorship is not "custody" as envisioned by the habeas corpus status citing Lehman v. Lycoming County Children's Services Agency, 458 U. S. 502 (1982) This case involved state custody of children taken from the natural parent.

Federal habeas corpus relief has been limited primarily to prisoners or constructive prisoners, persons subject to military authority or persons subject to deportation or extradition proceedings. In the Lehman case, the petitioner sought a declaration of the invalidity of a Pennsylvania statute under which her parental rights were terminated; a declaration that she was the legal parent of the children in question; and an order releasing them to her custody unless within 60 days an appropriate state court judicially

determined that the best interest of the children required that temporary custody remain with the state. The Supreme Court framed the question as "whether federal habeas corpus jurisdiction under 2254 may be invoked to challenge the constitutionality of a state statute under which a state has obtained custody of children and has terminated involuntarily the parental rights of their natural parent." 458 U.S. at 507. The Court went on to find that "although the scope of the writ of habeas corpus has been extended beyond that which the most literal reading of the statute might require, the Court has never considered it a generally available federal remedy for every violation of federal rights. Instead, past decisions have limited the writ's availability to challenges to state court judgments in situations where - as a result of state

court criminal conviction - a petitioner has suffered substantial restraints not shared by the public generally." 458 U.S. at 510 It found that "[u]nder these circumstances, extending the federal writs to challenges to state child custody decisions - challenges based on alleged constitutional defects collateral to the actual custody decision - would be an unprecedented expansion of the jurisdiction of the lower federal courts." 458 U.S. at 512. It was held that Sect. 2254 does not confer federal court jurisdiction. 458 U.S. at 516

The Magistrate finds the parallel between Lehman and the instant case unescapable. Petitioner is not in "custody" as envisioned by the federal habeas corpus statutes.

Petitioner McGee cites numerous state cases in support of her argument

that habeas corpus is appropriate in this matter. She is reminded that this Court is not concerned with what may be the more liberal application of the laws of the State of California. Rather, as a Court of limited jurisdiction, it can only consider matters in the federal context and apply federal law as interpreted by the Supreme Court of the United States.

The petition presents only issues of law and no evidentiary hearing will be necessary.

The Magistrate finds it appears from the petition, the return and the exhibits presented the petitioner is not entitled to writ of habeas corpus. The matter should be dismissed pursuant to 28 U.S.C. Section 2243.

IT IS THEREFORE RECOMMENDED that the Court enter an Order denying the petition and dismissing the action.

DATED: This 19th day of April, 1988.

/s/

JOHN R. KRONENBERG

United States Magistrate

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUNE McGEE, on behalf of MARTHA SWEET, Conservatee, Petitioner, vs. GORDON TREHARNE) Public Guardian) L.A. County; MARCELLA BROWN,) Administrator of Villa Oaks Convalescent Hospital, Respondent(s).)	No. CV86-0755AHS(B) ORDER GRANTING APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE

Pursuant to Rule 22(b), Federal Rules of Appellate Procedure, the Court grants Certificate for Probable Cause in conjunction with the Noitce of Appeal timely filed by Petitioner. The appeal is taken in good faith and is not frivolous.

DATED: August 5, 1986.

/s/

ALICEMARIE H. STOTLER
United States District Judge

It is recommended this 5th
day of August, 1986,

/s/

VOLNEY V. BROWN, JR.
United States Magistrate